

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:

CLYDE J. NEELEY

Debtor

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CASE NO. 04-40148

DECISION ON MOTION TO WITHDRAW

At Fort Wayne, Indiana, on December 21, 2005.

In this chapter 13 case, Emily Waddle, debtor's counsel has filed a motion to withdraw. The motion makes no effort to comply with the local rules of this court which, inter alia, require counsel to demonstrate that it advised the client of the intended withdrawal at least ten (10) days prior to filing the motion and, unless counsel's services have been terminated, contain a statement indicating that any response, objection or comment to the motion should be filed within ten (10) days. N.D. Ind. L.B.R. B-9010-2(e)(1), (2), (3). This combined motion and notice must also be served upon the client – N.D. Ind. L.B.R. B-9010-2(e) – something else which Ms. Waddle failed to do. Normally these shortcomings would result in an order denying the motion without prejudice to resubmission. In this case, however, the stated cause for the withdrawal is insufficient. See, In re Edsall, 89 B.R.772, 774 (Bankr. N.D.Ind.1988) (whether there are sufficient reasons justifying withdraw is within the court's discretion). Therefore, a simple denial without prejudice to resubmission is not appropriate.

The only reason counsel has offered justifying her withdrawal is that "counsel has completed all work hired to do in this matter." The court notes, however, that this case is pending under chapter 13 of the United States Bankruptcy Code and was filed on February 13, 2004. In addition to filing the case, debtor's counsel also filed a chapter 13 plan which runs for a term of 48 months. This plan

was confirmed on April 15, 2004. The debtor will not be entitled to a discharge until it has successfully completed all payments called for by that plan. 11 U.S.C. § 1328(a). Consequently, the debtor has yet to reach the mid-point of this case. The court also notes that the trustee has recently filed a motion to dismiss this case because of the debtor's default in the payments required under the plan, and counsel's motion to withdraw was filed shortly after the court scheduled a hearing on the motion to dismiss.

When an attorney undertakes to represent a chapter 13 debtor it signs on for the duration of the case. In re Davis, 258 B.R. 510, 513-14 (Bankr. M.D. Fla. 2001); In re Pair, 77 B.R. 976, 979 (Bankr. N.D. Ga. 1987). Counsel's engagement and counsel's responsibilities do not end with either the § 341 meeting or confirmation of a proposed plan. Unless other circumstances justifying withdrawal would arise, counsel's responsibilities continue until the case has come to a conclusion and been closed. Id.

Debtor's counsel has sent its client on a journey through chapter 13 and having done so is required to do more than simply wave goodbye as soon as the journey begins or abandon the endeavor as soon as troubles arise. That seems to be the thesis of counsel's motion when she asserts that – although the case is not yet halfway done and, based upon the trustee's motion, the debtor has apparently encountered problems along the way – she has completed all of her work,. Indeed, in view of the trustee's motion to dismiss, it seems the debtor may need counsel's assistance now as much as at any other time during the case, in order to evaluate the options and alternatives facing it. Since counsel's articulated "cause" for withdrawal is not adequate the motion will be denied. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court